

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 18413 of 2001

Between:

M. Narsimha Murthy s/o Surya Prakash Rao
A.P. Residential School, PTG Girls, Bhadragiri
Vizianagaram dist.

..... PETITIONER

AND

Project Officer, I.T.D.A., Parvathipuram.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records relating to the Proc. in Rc.No.2/94/A4 dt. 9-4-2001 of the Project Officer, ITDA, Parvathipuram and quash the same by issuing of a writ of certiorari.

Counsel for the Petitioner:MR.V.V.SARMA

Counsel for the Respondent: GP FOR SOCIAL WELFARE

The Court made the following :

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ORDER:

This writ petition is filed by the petitioner questioning the proceedings in R.C.No.2/94/A4, dated 09-04-2001, issued by the respondent in not considering his case for regularization of his services as Assistant Teacher.

2. It is the case of the petitioner that the respondent-Project Officer has appointed him as an Assistant Teacher on 21-01-1994 in Kanamudra English Medium School (KEMS), I.T.D.A. Parvathipuram, on a consolidated pay of Rs.1,000/- per month. Thereafter, the respondent-Project Officer transferred the petitioner on 02-09-1995, from the said school and deputed to A.P.Residential Girls School (S.T), (APRGS) Bhadragiri, Vizianagaram on purely temporary monthly honorarium basis. The respondent addressed a letter RCNo.2-94-/RA/Dy.E.O., dated 29-09-1995, to the Secretary, A.P.R.E.I.Society, Hyderabad, recommending the case of the petitioner for absorption on regular basis in the cadre of Post Graduate Teachers or atleast Trained Graduate Teachers under the APREI Society, Hyderabad. While so, the Principal of APRGS, Bhadragiri by Proceedings in Rc.No.58 of 1996, dated 18-09-1997, recommended the case of the petitioner for being absorption in the society. Aggrieved by the same, petitioner filed Writ Petition

No. 36023 of 1998 before this Court. In the said writ petition this Court by following the orders passed in W.P.M.P.No.19413 of 1993 in W.P.No.15273 of 1993, granted interim direction. In the earlier Writ Petition No.36023 of 1998 filed by the petitioner in W.P.M.P.No. 44385 of 1998 dated 28-01-2000, this Court directed the respondent to pay salary to the petitioner on par with the permanent teachers pending disposal of the said W.P.

3. As the respondent failed to comply with the interim orders of this court, the petitioner filed Contempt Case No. 1085 of 2000 before this Court. At that time, the 3rd respondent therein who is the respondent herein, filed vacate stay petition and this Court modified the interim order dated 28-01-2000 to the effect that there shall be a direction to the 3rd respondent (respondent herein) to consider the case of the petitioner for regularization of his services since he is under the control of the 3rd respondent. In view of the same, the respondent herein, vide order in RC.No.2/94/A4, dated 09-04-2001, rejected the request of the petitioner for regularization of his services as Assistant Teacher.

4. The grievance of the petitioner is that even though, he has completed more than six years of service as Assistant Teacher, his case was not considered for regularization of services as Assistant Teacher in terms of G.O.Ms.No.212 F&P Dept. dated 22-04-1994 and that the action of the respondent in passing orders in RC.No.2/94/A4 dated 09-04-2001 is illegal and arbitrary.

5. The learned counsel for the petitioner submits that the petitioner is having requisite qualifications for the post of Assistant Teacher and as per the orders dated 21-01-1994, of the respondent-Project Officer of I.T.D.A. Parvathipuram, he was appointed as Assistant Teacher and thereafter, he was transferred to APRGS, Bhadravathi. It is further stated that the Principal of the said school addressed a letter to the Secretary, A.P.R.E.Society, Hyderabad, stating that the petitioner is having requisite qualifications and also got three years of experience and that the petitioner is entitled for absorption as Assistant Teacher.

6. It is the contention of the respondent that in accordance with G.O.Ms.No.212 F&P, Dated 16-10-1998, the services of those persons continuing as on 25-11-1993 having completed the continuous minimum period of five years of service on or before 25-11-1999 shall be regularized in the substantive vacancies and that the impugned order ought not to have issued stating that the petitioner was appointed as

a teacher prior to 25-11-1993 in a regular vacancy. Accordingly, it was ordered that the services of the petitioner cannot be regularized and his case was accordingly rejected.

7. To resolve the controversy whether there was any appointment order dated 21-01-1994, given by the respondent this Court by order dated 05-07-2004, directed the respondent to file a counter affidavit stating that as to whether the respondent is responsible for the appointment of the petitioner as Assistant Teacher in Kanamudra School. Accordingly, the respondent filed his counter affidavit dated 27-07-2004 stating that the proceedings said to have been issued by the respondent in RC. No. 2/94-A4 dated 21-01-1994, appointing the petitioner as Assistant Teacher is not at all available in the records and the records show that no such proceedings were issued by the respondent-Project Officer, I.T.D.A.Parvathipuram. Even, the petitioner is also not able to produce a copy of the said proceedings dated 21-01-1994. It is explained that the name of the petitioner was recommended only by office note dated 21-09-1994. Therefore, the said Officer has no power either to issue any proceedings appointing the petitioner in any vacancies or he was delegated by any power and based on the office note, the petitioner cannot claim that the respondent issued the appointment order. Without there being any order, the petitioner submitted a report to the District Level Officer, Parvathipuram, requesting to issue appointment orders with effect from 21-09-1994 as per the office note. The representation of the petitioner dated 19-11-1994, was not at all submitted to the Project Officer I.T.D.A. Parvathipuram and therefore, the entry of the petitioner in the said school itself is illegal without there being any order passed by the respondent and no order dated 21-09-1994 has been issued to the petitioner and therefore, the letter addressed by Principal, APRGS, Bhadravari is without any basis. As the respondent has not issued any orders dated 21-09-1994 appointing the petitioner as Assistant Teacher in Kanamudra School, the question of regularization of services of the petitioner as Assistant Teacher does not arise.

8. In view of the aforesaid disputed questions of fact and in the absence of any specific orders dated 21-09-1994, said to have been issued by the respondents, the petitioner is not entitled for any relief and I am of the view that the respondent rightly passed the impugned order dated 09-04-2001 rejecting the case of the petitioner for regularization of his services.

9. The Writ Petition is accordingly dismissed. However, it is open for the petitioner to file a civil suit for resolving the disputed questions of fact as to whether there exists any such order said to have been issued by the respondent. No costs.

05-08-2004

Mjl/*

ASSISTANT REGISTRAR

To

1. The Project Officer, I.T.D.A., Parvathipuram
2. 2 CCs to G.P. for Social Welfare, High Court of A.P. Hyderabad. (OUT)
3. 2 CD copies.